



CITY OF DURHAM | NORTH CAROLINA

Date: July 27, 2011

To: Thomas J. Bonfield, City Manager
Through: Theodore L. Voorhees, Deputy City Manager
From: Edward R. Venable, Engineering/Stormwater Manager
Paul Wiebke, Assistant Stormwater Manager
Christy Sokol, Civil Engineer IV
Subject: Citizen Matters – Mr. Brian Mulligan – 3118 Marywood Drive

Executive Summary

Mr. Brian Mulligan of 3118 Marywood Drive has requested to appear at the August 4, 2011 work session regarding alleged erosion and flooding issues at his property.

Staff with the Stormwater Services Division has been in contact previously with Mr. Mulligan several times since December 2009 regarding his concerns, including on site meetings that took place in December 2009, September 2010, and October 2010, and letters sent by Stormwater Services staff dated February 2, 2010 and October 5, 2010. Based on staff's review of the information made available to them, it was concluded that Mr. Mulligan's concerns are a private property matter.

Mr. Brian Mulligan also appeared at the May 19, 2011 Work Session regarding his concerns. The matter was referred to the City Attorney's Office, who upon review of the matter, determined that concerns raised by Mr. Mulligan at the Work Session had been previously answered by City staff. A letter dated June 10, 2011 was sent to Mr. Mulligan with the City Attorney's Office determination.

Recommendation

Given past threats of litigation it is recommended that discussion of any recommendations be held in closed session.

Background

Mr. Mulligan was referred to Stormwater Services staff in December 2009 to respond to his drainage concerns with his backyard. In that same month staff met on site with Mr. Mulligan to observe the site conditions and to listen to Mr. Mulligan's concerns. During this meeting Mr.

Mulligan was informed that the issues he raised are a private property matter. Upon receipt of further calls regarding this matter, a letter was sent to the property owners on February 2, 2010.

In September 2010 the Assistant Stormwater Division Manager received a written request from Mr. Mulligan to reinvestigate his drainage concerns. In response, staff engineers met on site with Mr. Mulligan to review his concerns. On October 5, 2010 a letter was sent to Mr. Mulligan that explained that property owners are responsible for the ownership and maintenance of drainage systems located on their property and reaffirmed that this issue is a private property matter.

Last year Stormwater Services staff was asked to provide affidavits in a lawsuit filed by Mr. Mulligan against his neighbors, the property owners of 8 Firethorn Court. In addition, Stormwater Services staff was contacted by the attorney representing the neighbors who attempted to coordinate a settlement involving the owners of property at 3110 and 3118 Marywood Drive, and 8 Firethorn Court. The attempted settlement was not successful and summary judgment was eventually granted to Mr. Mulligan's neighbors.

On May 9, 2011 Mr. Mulligan filed a complaint with NCDENR-DWQ alleging stormwater drainage from Fieldstone subdivision was causing erosion and health issues on Marywood Subdivision lots. Investigation by DWQ staff found no wetland or stream standard violations present at the locations identified by Mr. Mulligan. DWQ staff also indicated that no water samples were taken during the May field visit as it was determined not to be necessary as State staff saw no visible signs of contaminants from the upstream properties adjacent to 3118 Marywood Drive. The only potential pollutant source identified by DWQ staff was pet waste that appeared to be deposited on the property of Mr. Mulligan by dogs under his care.

Issues/Analysis

Mr. Mulligan previously indicated a desire to have the channel through his property piped. Staff estimates the cost of construction at \$30,000. However this channel is an intermittent stream regulated by the City/County Planning Department and North Carolina Department of Environment and Natural Resources - Division of Water Quality (NCDENR-DWQ). Per current standards piping of a regulatory stream for purposes other than utility or vehicular access crossings is not permitted if other feasible, less intrusive alternatives exist. Staff identified an alternative to piping the stream that would include installation of standard erosion control measures as recommended by the "NC Erosion and Sediment Control Planning and Design Manual", such as, check dams, erosion control matting, seeding and mulching. Staff estimates the cost to the property owner to install these types of measures at approximately \$3,000.

Staff has reviewed all available information and has concluded that Mr. Mulligan's concerns are a private property matter. Mr. Mulligan continues to disagree with the City's determination on this matter and previously has indicated intent to sue the City if he is not satisfied with the City's response to his concerns.

Mr. Mulligan informed staff that he plans to request that the city install a berm on his property that would direct surface water runoff coming onto his property around instead of through the chain link fence at the back corner of his lot. This request entails improvement of a private drainage system, and any work to maintain, repair, or improve private drainage systems are the responsibility of the property owner.

Alternatives

Given the past threats of litigation it is recommended that discussion of any alternatives be held in closed session.

Financial Impacts

There is no financial impact to the City for this item.

SDBE Summary

The Ordinance to Promote Equal Opportunity in City Contracting does not apply to this item.